

MONTANA LEGISLATIVE HISTORY

Chapter 525 19 92

Bill H 559 S _____ Original bill & history ✓ C

H. Committee on Select Committee

Hearing Date(s) Mar 04 ✓ C

Mar 02 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on Finance & Banking

Hearing Date(s) Mar 18 ✓ C

Mar 15 ✓ C

Mar 21 ✓ C

_____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

HB 558 INTRODUCED BY SMITH, ET AL.

LC1138 DRAFTER: FOX

DIRECT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE DISEASES, INCLUDING SEXUALLY TRANSMITTED DISEASES

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO HUMAN SERVICES & AGING		
2/17	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED		
2/24	2ND READING PASSED	61	39
2/26	3RD READING PASSED	57	43
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/19	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED AS AMENDED	32	18
4/07	3RD READING CONCURRED	29	21
	RETURNED TO HOUSE WITH AMENDMENTS		
4/12	2ND READING AMENDMENTS CONCURRED	76	18
4/14	3RD READING CONCURRED AS AMENDED	58	42
4/20	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 524		
	EFFECTIVE DATE: 10/01/97		

HB 559 INTRODUCED BY GRIMES

LC0299 DRAFTER: LANE

REVISE AND RECODIFY PENALTY LAWS RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO CORRECTIONS SELECT COMMITTEE		
2/14	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
3/04	HEARING		
3/06	FISCAL NOTE PRINTED		
3/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/12	2ND READING PASSED	84	15
3/13	3RD READING PASSED	85	15
	TRANSMITTED TO SENATE		
3/14	FIRST READING		
3/14	REFERRED TO FINANCE & CLAIMS		
3/18	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	25	17
3/28	3RD READING CONCURRED	32	16
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	2ND READING AMENDMENTS CONCURRED	96	3
4/15	3RD READING CONCURRED AS AMENDED	96	3
4/19	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		

5/02 SIGNED BY GOVERNOR
CHAPTER NUMBER 525
EFFECTIVE DATE: 10/01/97

HB 560 INTRODUCED BY PECK

LC0929 DRAFTER: MCCLURE

IMPLEMENT THE MORATORIUM ON THE CREATION OF NEW SCHOOL DISTRICTS BY ELIMINATING THE PROCEDURES FOR CREATION OF A NEW ELEMENTARY OR HIGH SCHOOL DISTRICT

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/14	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	95	0
2/26	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/17	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	49	1
3/28	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE		
4/04	SIGNED BY SPEAKER		
4/05	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 219		
	EFFECTIVE DATE: 07/01/97		

HB 561 INTRODUCED BY KASTEN, ET AL.

LC0537 DRAFTER: HEIMAN

FURTHER THE RENEWAL OF STATE GOVERNMENT BY HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO TAXATION		
2/17	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/19	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/08	2ND READING PASSED	95	4
3/10	3RD READING PASSED	93	7
	TRANSMITTED TO SENATE		
3/11	FIRST READING		
3/11	REFERRED TO TAXATION		
3/19	HEARING		
4/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/09	2ND READING CONCURRED	50	0
4/10	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	2ND READING AMENDMENTS CONCURRED	98	1
4/15	3RD READING CONCURRED AS AMENDED	92	5
4/21	SIGNED BY SPEAKER		

House BILL NO. 559

INTRODUCED BY [Signature] [Signature]

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND RECODIFYING PENALTY LAWS RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES; PROVIDING ON SECOND OR SUBSEQUENT CONVICTIONS, THAT THE REMAINING PORTION OF A PREVIOUSLY SUSPENDED SENTENCE MAY BE IMPOSED IF A DEFENDANT FAILS TO COMPLETE MONTHLY MONITORING FOLLOWING A TREATMENT PROGRAM AND THAT 6 MONTHS' ADDITIONAL MONITORING MAY BE IMPOSED; DELETING THE REQUIREMENT THAT DRIVING UNDER THE INFLUENCE OR EXCESSIVE ALCOHOL CONCENTRATION VIOLATIONS BE CONSIDERED CONFIDENTIAL CRIMINAL JUSTICE INFORMATION UPON PASSAGE OF 5 YEARS WITHOUT SUBSEQUENT CONVICTION; RECOGNIZING CONVICTIONS FROM TRIBAL COURTS OR FEDERAL ENCLAVES FOR THE PURPOSE OF DETERMINING NUMBER OF PRIOR CONVICTIONS AND MAINTAINING INDIVIDUAL DRIVING RECORDS; AMENDING SECTIONS 46-18-201, 61-8-401, 61-8-406, 61-8-421, 61-8-422, 61-8-714, 61-8-722, AND 61-11-101, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. (Temporary) Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) payment of the costs of confinement;

- 1 (v) payment of a fine as provided in 46-18-231;
- 2 (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- 3 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 4 (viii) with the approval of the facility or program, an order that the offender be placed in a
- 5 community corrections facility or program as provided in 53-30-321;
- 6 (ix) community service;
- 7 (x) home arrest as provided in Title 46, chapter 18, part 10;
- 8 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
- 9 society;
- 10 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 11 or
- 12 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).
- 13 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
- 14 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
- 15 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
- 16 restrictions or conditions may include any of those listed in subsection (1)(a).
- 17 (c) impose a fine as provided by law for the offense;
- 18 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
- 19 counsel as provided in 46-8-113;
- 20 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
- 21 the defendant to the department of corrections for placement in an appropriate correctional institution or
- 22 program;
- 23 (f) with the approval of the facility or program, order the offender to be placed in a community
- 24 corrections facility or program as provided in 53-30-321; or
- 25 (g) impose any combination of subsections (1)(b) through (1)(f).
- 26 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
- 27 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
- 28 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
- 29 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.
- 30 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be

1 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
2 a felony, regardless of whether any other conditions are imposed.

3 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
4 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
5 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
6 allowed for jail or home arrest time already served.

7 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
8 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
9 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
10 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

11 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
12 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

13 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
14 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
15 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
16 suspended.

17 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
18 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred
19 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

20 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
21 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
22 Title 46, chapter 23, part 5.

23 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
24 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
25 program.

26 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
27 imprisonment of the offender in the state prison, including placement of the offender in a community
28 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
29 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
30 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were

1 not selected, based on the criteria contained in 46-18-225.

2 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
3 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

4 (a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ [section 11] for
5 sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period,
6 except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3
7 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or
8 conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

9 (i) jail base release;

10 (ii) jail time not exceeding 180 days;

11 (iii) conditions for probation;

12 (iv) payment of the costs of confinement;

13 (v) payment of a fine as provided in 46-18-231;

14 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

15 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

16 (viii) with the approval of the facility or program, an order that the offender be placed in a
17 community corrections facility or program as provided in 53-30-321;

18 (ix) community service;

19 (x) home arrest as provided in Title 46, chapter 18, part 10;

20 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
21 society;

22 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

23 or

24 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

25 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
26 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
27 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
28 restrictions or conditions may include any of those listed in subsection (1)(a).

29 (c) impose a fine as provided by law for the offense;

30 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed

1 counsel as provided in 46-8-113;

2 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
3 the defendant to the department of corrections for placement in an appropriate correctional institution or
4 program;

5 (f) with the approval of the facility or program, order the offender to be placed in a community
6 corrections facility or program as provided in 53-30-321; or

7 (g) impose any combination of subsections (1)(b) through (1)(f).

8 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
9 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
10 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
11 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

12 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
13 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
14 a felony, regardless of whether any other conditions are imposed.

15 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
16 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
17 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
18 allowed for jail or home arrest time already served.

19 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
20 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
21 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
22 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

23 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
24 of imprisonment imposed under 45-5-102 may not be deferred or suspended.

25 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
26 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
27 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
28 suspended.

29 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a
30 sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred

1 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

2 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
3 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
4 Title 46, chapter 23, part 5.

5 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
6 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
7 offender program.

8 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
9 imprisonment of the offender in the state prison, including placement of the offender in a community
10 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
11 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
12 or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were
13 not selected, based on the criteria contained in 46-18-225.

14 (12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does
15 not apply to a person sentenced under 46-18-219."
16

17 **Section 2.** Section 61-8-401, MCA, is amended to read:

18 **"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as
19 provided in 61-8-714, ~~and~~ 61-8-723, [sections 9, 10, and 11] for any person who is under the influence
20 of:

21 (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open
22 to the public;

23 (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

24 (c) any other drug to drive or be in actual physical control of a vehicle within this state; or

25 (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle
26 within this state.

27 (2) The fact that any person charged with a violation of subsection (1) is or has been entitled to
28 use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge
29 of violating subsection (1).

30 (3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any

1 combination ~~thereof~~ of alcohol and drugs, a person's ability to safely operate a motor vehicle has been
2 diminished.

3 (4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have
4 been committed by any person driving or in actual physical control of a vehicle while under the influence
5 of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the
6 person's blood, urine, or breath, shall give rise to the following inferences:

7 (a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the
8 person was not under the influence of alcohol.

9 (b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that
10 fact ~~shall~~ may not give rise to any inference that the person was or was not under the influence of alcohol
11 but ~~such~~ the fact may be considered with other competent evidence in determining the guilt or innocence
12 of the person.

13 (c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the
14 person was under the influence of alcohol. The inference is rebuttable.

15 (5) The provisions of subsection (4) do not limit the introduction of any other competent evidence
16 bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a any
17 combination of ~~the two~~ alcohol and drugs.

18 (6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714,
19 61-8-722, [sections 9, 10, and 11] and subsections (1) through (5) of this section, with the word "state"
20 in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given
21 jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties ~~therein~~
22 provided in those sections.

23 (7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."
24

25 **Section 3.** Section 61-8-406, MCA, is amended to read:

26 **"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is
27 unlawful and punishable as provided in 61-8-722 ~~and~~, 61-8-723, [sections 9, 10, and 11] for any person
28 to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while
29 the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10
30 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

1 **Section 4.** Section 61-8-421, MCA, is amended to read:

2 **"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under ~~61-5-212, 61-8-714, or~~
3 ~~61-8-722~~ [section 10] must be seized by the arresting agency within 10 days after the conviction and
4 disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions
5 of Title 44, chapter 12, part 2, apply to the extent applicable.

6 (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within
7 20 days after the seizure of the motor vehicle.

8 (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The
9 owner of the motor vehicle may rebut the presumption by proving a defense under ~~61-8-714(3)(b)(iii) or~~
10 ~~61-8-722(3)(b)(iii)~~ [section 10(2)] or by proving that the owner was not convicted of a ~~second or~~
11 ~~subsequent offense under 61-5-212 or of a~~ third or subsequent offense under 61-8-401 or 61-8-406. It is
12 not a defense that the convicted person owns the motor vehicle jointly with another person.

13 (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be
14 distributed first to the holders of security interests who have presented proper proof of their claims, up to
15 the amount of the interests or the amount received from the sale, whichever is less, and the remainder to
16 the general fund of the arresting agency.

17 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor
18 vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated
19 value of the motor vehicle.

20 (5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons
21 include return of the motor vehicle without a sale to an owner who is unable to present an adequate
22 defense under this section but is found by the court to be without fault."

23
24 **Section 5.** Section 61-8-422, MCA, is amended to read:

25 **"61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture**
26 **-- penalty.** (1) It is unlawful for the owner of a vehicle subject to ~~actions under 61-5-212(3) or (6) seizure~~
27 ~~under 61-5-212 or seizure and~~ forfeiture under ~~61-8-714 or 61-8-722~~ [section 10] to transfer, sell, or
28 encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the
29 underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the
30 underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying

1 charge is otherwise terminated.

2 (2) The prohibition against transfer of title may not be stayed pending the determination of an
3 appeal from the conviction on the underlying charge.

4 (3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned
5 in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both."

6
7 **Section 6.** Section 61-8-714, MCA, is amended to read:

8 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) ~~Except as provided in~~
9 ~~subsections (8) and (9), a~~ A person convicted of a violation of 61-8-401 shall be punished by imprisonment
10 ~~in the county jail~~ for not less than 24 consecutive hours or more than 60 days and shall be punished by a
11 fine of not less than \$100 or more than \$500. The initial 24 hours of the imprisonment term must be served
12 in the county jail and may not be served under home arrest. The imprisonment sentence may not be
13 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
14 defendant's physical or mental well-being.

15 (2) ~~Except as provided in subsection (8), on~~ On a second conviction, the person shall be punished
16 by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, ~~at least~~
17 ~~48 hours of which must be served consecutively,~~ or more than 6 months. At least 48 hours of the
18 imprisonment term must be served consecutively in the county jail and may not be served under home
19 arrest. ~~Except as provided in subsection (8), 3~~ Three days of the imprisonment sentence may not be
20 suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the
21 defendant's physical or mental well-being.

22 (3) ~~(a) Except as provided in subsection (8), on~~ On the third conviction, the person shall be
23 punished by imprisonment for a term of not less than 30 days, ~~at least 48 hours of which must be served~~
24 ~~consecutively,~~ or more than 1 year and by a fine of not less than \$500 or more than \$1,000. At least 48
25 hours of the imprisonment term must be served consecutively in the county jail and may not be served
26 under home arrest. ~~Except as provided in subsection (8), notwithstanding any provision to the contrary~~
27 ~~providing for suspension of execution of a sentence imposed under this subsection, the~~ The imposition or
28 execution of the first 10 days of the imprisonment sentence ~~imposed for a third offense that occurred~~
29 ~~within 5 years of the first offense~~ may not be suspended.

30 ~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed~~

1 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be
2 seized and subjected to the procedure provided under 61-8-421.

3 (iii) ~~A vehicle used by a person as a common carrier in the transaction of business as a common~~
4 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
5 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
6 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
7 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
8 ~~criminal laws of this state or the United States.~~

9 (iii) ~~Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~
10 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use,~~
11 ~~or other act on which the forfeiture is sought.~~

12 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
13 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
14 than \$1,000 or more than \$10,000. ~~Except as provided in subsection (8), notwithstanding any provision~~
15 ~~to the contrary providing for suspension of execution of a sentence imposed under this subsection, the~~ The
16 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
17 subsequent offense may not be suspended.

18 (5) ~~In addition to the punishment provided in this section, regardless of disposition, the defendant~~
19 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
20 ~~of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug~~
21 ~~treatment, or both, must be ordered for a first time offender upon a finding of chemical dependency made~~
22 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
23 ~~by the department of public health and human services. On conviction of a second or subsequent offense~~
24 ~~under this section, in addition to the punishment provided in this section, regardless of disposition, the~~
25 ~~defendant shall complete an alcohol information course at an alcohol treatment program approved by the~~
26 ~~department of public health and human services, which must include alcohol or drug treatment, or both.~~
27 ~~As long as the alcohol information course is approved as provided in this subsection and the treatment is~~
28 ~~provided by a certified chemical dependency counselor, the defendant may attend the information course~~
29 ~~and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment~~
30 ~~program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined~~

1 ~~by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted~~
2 ~~by the department of corrections. Upon determination, the court shall order the defendant's appropriate~~
3 ~~level of treatment. If more than one counselor makes a determination as provided in this subsection, the~~
4 ~~court shall order an appropriate level of treatment based upon the determination of one of the counselors.~~
5 ~~On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for~~
6 ~~a period of at least 1 year from the date of admission to the program. A court or counselor may not require~~
7 ~~attendance at a self help program other than at an "open meeting" as that term is defined by the self help~~
8 ~~program. A defendant may voluntarily participate in self help programs. Each counselor providing education~~
9 ~~or treatment shall, at the commencement of the education or treatment, notify the court that the defendant~~
10 ~~has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend~~
11 ~~the information course or treatment program, the counselor shall notify the court of the failure.~~

12 ~~(6) For the purpose of determining the number of convictions under this section, "conviction"~~
13 ~~means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute~~
14 ~~in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court~~
15 ~~in this state or another state, which forfeiture has not been vacated. An offender is considered to have~~
16 ~~been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the~~
17 ~~commission of the present offense and a previous conviction, unless the offense is the offender's fourth~~
18 ~~or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If~~
19 ~~there has not been an additional conviction for an offense under this section for a period of 5 years after~~
20 ~~a prior conviction under this section, then all records and data relating to the prior conviction are~~
21 ~~confidential criminal justice information, as defined in 44-5-103, and public access to the information may~~
22 ~~only be obtained by district court order upon good cause shown.~~

23 ~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
24 ~~violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

25 ~~(8) The court may order that a term of imprisonment imposed under this section be served in~~
26 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~
27 ~~financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions~~
28 ~~on the defendant's ability to leave the premises of the facility and require that the defendant follow the~~
29 ~~rules of that facility. The facility may be, but is not required to be, a community based prerelease center~~
30 ~~as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the~~

1 sentencing court.

2 ~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or~~
3 ~~subsequent offense, the court may order that a term of imprisonment imposed under this section be served~~
4 ~~by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

5 ~~(10) A court may not defer imposition of sentence under this section."~~

6
7 **Section 7.** Section 61-8-722, MCA, is amended to read:

8 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) ~~Except as provided in~~
9 ~~subsection (9), a~~ A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not
10 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

11 (2) ~~Except as provided in subsection (9), on~~ On a second conviction of a violation of 61-8-406,
12 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
13 county jail and not on home arrest, or more than 30 days and by a fine of not less than \$300 or more than
14 \$500.

15 (3) (a) ~~Except as provided in subsection (9), on~~ On a third conviction of a violation of 61-8-406,
16 the person shall be punished by imprisonment for not less than 48 consecutive hours, to be served in the
17 county jail and not on home arrest, or more than 6 months and by a fine of not less than \$500 or more than
18 \$1,000.

19 (b) (i) ~~On the third or subsequent conviction, the court, in addition to any other penalty imposed~~
20 ~~by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be~~
21 ~~seized and subjected to the procedure provided under 61-8-421.~~

22 (iii) ~~A vehicle used by a person as a common carrier in the transaction of business as a common~~
23 ~~carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle~~
24 ~~consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~
25 ~~omission established by the owner to have been committed or omitted by a person other than the owner~~
26 ~~while the vehicle was unlawfully in the possession of a person other than the owner in violation of the~~
27 ~~criminal laws of this state or the United States.~~

28 (iii) ~~Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's~~
29 ~~interest if the person did not know and could not have reasonably known of the unlawful possession, use~~
30 ~~or other act on which the forfeiture is sought.~~

1 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
2 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
3 than \$1,000 or more than \$10,000. ~~Except as provided in subsection (9), notwithstanding any other~~
4 ~~provision providing for suspension of execution of a sentence imposed under this subsection, the~~ The
5 imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or
6 subsequent offense may not be suspended.

7 ~~(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and~~
8 ~~suspension of driver's licenses, apply to any conviction under 61-8-406.~~

9 ~~(6) In addition to the punishment provided in this section, regardless of disposition, the defendant~~
10 ~~shall complete an alcohol information course at an alcohol treatment program approved by the department~~
11 ~~of public health and human services, which must include alcohol or drug treatment, or both, in accordance~~
12 ~~with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the~~
13 ~~commencement of the education or treatment, notify the court that the defendant has been enrolled in a~~
14 ~~course or treatment program. If the defendant fails to attend the course or the treatment program, the~~
15 ~~counselor shall notify the court of the failure.~~

16 ~~(7) For the purpose of determining the number of convictions under this section, "conviction"~~
17 ~~means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a~~
18 ~~forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or~~
19 ~~another state, which forfeiture has not been vacated. An offender is considered to have been previously~~
20 ~~convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the~~
21 ~~present offense and a previous conviction, unless the offense is the offender's fourth or subsequent~~
22 ~~offense, in which case all previous convictions must be used for sentencing purposes. If there has not been~~
23 ~~an additional conviction for an offense under this section for a period of 5 years after a prior conviction~~
24 ~~under this section, then all records and data relating to the prior conviction are confidential criminal justice~~
25 ~~information, as defined in 45-5-103, and public access to the information may only be obtained by district~~
26 ~~court order upon good cause shown.~~

27 ~~(8) For the purpose of calculating subsequent convictions under this section, a conviction for a~~
28 ~~violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.~~

29 ~~(9) The court may order that a term of imprisonment imposed under this section be served in~~
30 ~~another facility made available by the county and approved by the sentencing court. The defendant, if~~

1 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions
 2 on the defendant's ability to leave the premises of the facility and require that the defendant follow the
 3 rules of that facility. The facility may be, but is not required to be, a community based prerelease center
 4 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
 5 sentencing court.

6 (10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or
 7 subsequent offense, the court may order that a term of imprisonment imposed under this section be served
 8 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

9 (11) A court may not defer imposition of sentence under this section."

10
 11 **Section 8.** Section 61-11-101, MCA, is amended to read:

12 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**
 13 **of licenses.** (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory
 14 the suspension or revocation of the driver's license of the person by the department, the court in which
 15 ~~such~~ the conviction is had shall require the surrender to it of all driver's licenses then held by the person
 16 ~~so~~ convicted. The court shall ~~thereupon~~, within 5 days, forward the license to the department and at the
 17 same time forward a record of ~~such~~ the conviction to the department, providing that if ~~such~~ the person
 18 does not possess a driver's license the court shall ~~so~~ indicate that fact in its report to the department.

19 (2) Every court having jurisdiction over offenses committed under any act of this state or municipal
 20 ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the
 21 department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a
 22 violation of any ~~such~~ motor vehicle laws, other than regulations governing standing or parking, and may
 23 recommend the suspension of the driver's license of the person ~~so~~ convicted. The court may also
 24 recommend that the department issue a restricted probationary license on the condition that the individual
 25 comply with the requirement that ~~he~~ the person attend and complete an alcohol information course ~~as~~
 26 provided in ~~61-8-714 and 61-8-722~~ [section 9]. The department shall issue a restricted probationary license
 27 unless the person ~~otherwise~~ is not entitled to a Montana driver's license. Upon issuance of a probationary
 28 license, the licensee is subject to the restrictions set forth ~~thereon~~ and may not operate a vehicle in violation
 29 of those restrictions.

30 (3) Any court or other agency of this state, or a subdivision ~~thereof~~ of the state, ~~which that~~ has

jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report ~~any~~
~~such~~ the action and the adjudication upon which it is based to the department within 5 days on forms
furnished by the department.

(4) A tribal court of a federally recognized Indian reservation may report convictions under tribal
law or regulation regulating the operation of motor vehicles to the department for recording purposes under
this chapter. Convictions under federal law or regulations governing the operation of motor vehicles on
federal enclaves may also be reported to the department under this section."

**NEW SECTION. Section 9. Driving under influence of alcohol or drugs -- driving with excessive
alcohol concentration -- alcohol information course required.** (1) (a) In addition to the punishments provided
in 61-8-714 and 61-8-722, regardless of disposition, a defendant convicted of a violation of 61-8-401 or
61-8-406 shall complete an alcohol information course at an alcohol treatment program approved by the
department of public health and human services, which may include alcohol or drug treatment, or both.

(b) As long as the alcohol information course is approved as provided in this section and the
treatment is provided by a certified chemical dependency counselor, the defendant may attend the
information course and treatment program of the defendant's choice. The treatment provided to the
defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,
or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient
placement rules adopted by the department of public health and human services. Upon determination, the
court shall order the defendant's appropriate level of treatment. If more than one counselor makes a
determination as provided in this subsection, the court shall order an appropriate level of treatment based
upon the determination of one of the counselors.

(c) Each counselor providing education or treatment shall, at the commencement of the education
or treatment, notify the court that the defendant has been enrolled in an alcohol information course or
treatment program. If the defendant fails to attend the information course or treatment program, the
counselor shall notify the court of the failure.

(d) A court or counselor may not require attendance at a self-help program other than at an "open
meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in
self-help programs.

(2) Alcohol or drug treatment, or both, must be ordered for a first-time offender convicted of a

1 violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical
2 dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of
3 public health and human services.

4 (3) (a) On conviction of a second or subsequent offense under 61-8-714 or 61-8-722 for a violation
5 of 61-8-401 or 61-8-406, in addition to the punishment provided in 61-8-714 or 61-8-722, regardless of
6 disposition, the defendant shall complete an alcohol information course at an alcohol treatment program
7 approved by the department of public health and human services, which must include alcohol or drug
8 treatment, or both.

9 (b) (i) On a second or subsequent conviction, the treatment program provided for in subsection
10 (1) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to
11 the program.

12 (ii) If a defendant fails to comply with the monitoring program imposed under subsection (3)(b)(i),
13 the court shall revoke the suspended sentence, impose any remaining portion of the suspended sentence,
14 and may include additional monthly monitoring for up to an additional 6 months.

15
16 **NEW SECTION. Section 10. Driving under influence of alcohol or drugs -- driving with excessive**
17 **alcohol concentration -- forfeiture of vehicle.** (1) On the third or subsequent conviction of a violation of
18 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and
19 any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the
20 time of the offense to be seized and subjected to the procedure provided under 61-8-421.

21 (2) A vehicle used by a person as a common carrier in the transaction of business as a common
22 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle
23 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or
24 omission established by the owner to have been committed or omitted by a person other than the owner
25 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the
26 criminal laws of this state or the United States.

27 (3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's
28 interest if the person did not know and could not have reasonably known of the unlawful possession, use,
29 or other act on which the forfeiture is sought.

NEW SECTION. Section 11. Driving under influence of alcohol or drugs -- driving with excessive

alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, a federal enclave, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, another state, a federal enclave, or a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) The court may order that a term of imprisonment imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714 or 61-8-722.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406.

1 NEW SECTION. **Section 12. Codification instruction.** [Sections 9, 10, and 11] are intended to be
2 codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7,
3 apply to [sections 9, 10, and 11].

4
5 NEW SECTION. **Section 13. Applicability.** [This act] applies to offenses committed on or after
6 October 1, 1997.

7 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0559, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising and recodifying penalty laws relating to alcohol or drugs and driving-related offenses.

ASSUMPTIONS:

1. This bill provides that tribal courts may report DUI/BAC convictions to the Department of Justice (DOJ). As a result, the DOJ will process additional driver license suspensions and subsequent reinstatements.
2. The DOJ estimates that 210 additional driver licenses will be reinstated in FY99 and 160 in FY98 (210 x 75%) as a result of this bill. Each reinstatement will pay \$100 to the general fund, of which half will go to counties to help fund approved DUI programs. Estimated additional revenue is \$16,000 in FY98 and \$21,000 in FY99.
3. The Highway Patrol pays incarceration costs for their DUI convictions. The impact of mandating that at least 1 to 2 days must be spent in the county jail has no impact since the Patrol would pay whether the court order was a house arrest or time in the county jail.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Department of Justice:		
<u>Expenditures:</u>		
Grants to counties (01)	\$8,000	\$10,500
<u>Revenues:</u>		
DUI Reinstatement (01)	\$16,000	\$21,000
<u>Net Impact on Fund Balance: (revenue minus expense)</u>		
General fund (01)	\$8,000	\$10,500

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Authorized county DUI programs would receive approximately an additional \$8,000 in FY98 and \$10,500 in FY99.

Duane Lewis 2.20.97
 DUANE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

DUANE GRIMES, PRIMARY SPONSOR DATE

Fiscal Note for HB0559, as introduced

HB 559

CRAIG REAP, Chief, Montana Highway Patrol
{Tape: 1; Side: A; Approx. Time Count: 10.3.}

RUSSELL HILL, Montana Trial Lawyers Association
{Tape: 1; Side: A; Approx. Time Count: 11.8.}

Opponents' Testimony:

BOB GILBERT, Montana Magistrates Association
{Tape: 1; Side: a; Approx. Time Count: 12.7.}

EXHIBIT 2

Informational Testimony: None

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 20.2.}

Closing by Sponsor: REP. ROD MARSHALL
{Tape: 1; Side: A; Approx. Time Count: 21.7.}

HEARING ON HB 559

Opening Statement By Sponsor: REP. DUANE GRIMES, HD 29
{Tape: 1; Side: A; Approx. Time Count: 23.8; Comments: Rep. Grimes introduced the bill.}

Proponents' Testimony:

BRENDA NORDLUND, Montana Department of Justice
{Tape: 1; Side: a; Approx. Time Count: 25.3.}

EXHIBITS 3 & 4

GREGORY MOHR, DUI Task Force, Sidney
{Tape: 1; Side: A; Approx. Time Count: 36.2.}

MIKE RUPPERT, Boyd Andrew Treatment Center
{Tape: 1; Side: A; Approx. Time Count: 39.0.}

Opponents' Testimony: None

Questions from Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 40.4; Comments: Questions and responses continued on Tape 1, Side B.}

Closing by Sponsor: Rep. Duane Grimes
{Tape: 1; Side: B; Approx. Time Count: 5.4.}

HEARING ON SB 106

Opening Statement by Sponsor: SEN. FRED VAN VALKENBURG, SD 32
{Tape: 1; Side: B; Approx. Time Count: 7.0; Comments: Sen. Van Valkenburg introduced the bill.}

PAGE 03 3
EXHIBIT
DATE 3/4/97
HB 559

OFFICE OF

**GLACIER
COUNTY
ATTORNEY**

- 14 EAST MAIN STREET
- P.O. BOX 428
- CUT BANK, MONTANA 59427
- PHONE: 406-873-2277
- FAX: 406-873-2643

*Larry D. Epstein - County Attorney
Thane P. Johnson - Deputy*

March 4, 1997

FAXED -

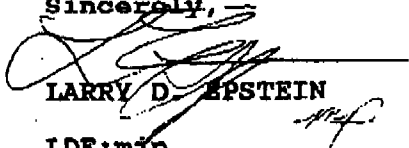
The Honorable Ernest Bergsagel, Chairman
Select Committee On Corrections

I am writing this letter from my office in support of HB 559 proposed changes in Section 61-11-101 MCA. This has constantly been an issue in the Glacier County Attorney's office. The recognition or nonrecognition of Blackfeet Tribal convictions, as you might suspect, causes great concern. The language in the proposed legislation adding recognition of Tribal Court's convictions as subparagraph (4) would be of immeasurable assistance to my office and, I suspect, to other offices of reservation counties.

I am also enclosing copies of very short (for lawyers) Briefs submitted by my office and by a defense counsel on behalf of one Brenda Kipp. Ms. Kipp has raised the question of recognition of 3 prior DUI's, all in the 1990's, received upon pleas of guilty in the Blackfeet Tribal Court. These Briefs, I think, lay out the problem very realistically. I am hopeful, given your very busy schedule, that you will have a chance to scan these and consider them in your deliberations at committee.

I appreciate the time you are taking to review this material. I hope that the committee will make a recommendation in favor of this legislation. If you desire further input please give me a call.

Sincerely, —


LARRY D. EPSTEINLDE:mjp
Encs.Dictated:
But Not Read

LARRY D. EPSTEIN
GLACIER COUNTY ATTORNEY
14 E. MAIN, P. O. BOX 428
CUT BANK, MT 59427
(406) 873-2277
ATTORNEY FOR PLAINTIFF

MONTANA NINTH JUDICIAL DISTRICT COURT, GLACIER COUNTY

STATE OF MONTANA,	*	No. DC 96-65
Plaintiff,*		
VS.	*	STATE'S BRIEF IN
		OPPOSITION TO
BRENDA KIPP,	*	MOTION TO QUASH
Defendant.*		

A Brief and Motion have been filed herein with respect to a Motion to Quash all record and reference to Tribal Court convictions assessed by the Blackfeet Tribal Court. This Brief is filed in opposition to that Motion.

THE FACTS

Brenda Kipp, the Defendant here, was arrested by an officer of the Cut Bank City Police Department on the 20th of August, 1996, and was issued a citation for the offense of Driving or Operating a Motor Vehicle While Under the Influence of Alcohol, a Misdemeanor, in violation of Section 61-8-401(1)(a) MCA. A subsequent review of the Defendant's driving record, maintained by the State of Montana, Driver Improvement Division, revealed recognition of three prior convictions for the same offense, as follows:

May 7, 1990 - Blackfeet Tribal Court

July 17, 1992 - Blackfeet Tribal Court
August 8, 1994 - Blackfeet Tribal Court

Because of her prior convictions, the Defendant's case was referred to the Glacier County Attorney's office for filing a felony DUI charge pursuant to Section 61-8-722(4) MCA.

The Defendant has requested that this Court ignore the three Blackfeet Tribal convictions, arguing that there has been no affirmative showing by the State of Montana that the Defendant was afforded her Sixth Amendment Right to Counsel by the Blackfeet Tribal Court.

A factual hearing was held before this Court on the 5th of February, 1997. Chief Tribal Judge Don Sollars testified with respect to the arraignment process in the Blackfeet Tribal Court system. Essentially his uncontroverted testimony indicates the Defendant received a prearraignment consultation with a lay practitioner, trained by the Blackfeet Tribal Court and known as a "defender" in the tribal criminal system. This person, prior to arraignment and entry of a plea, advises each defendant, such as Brenda Kipp, of possible consequences and penalties and of her right to counsel (by a defender) and of her rights in general under the Indian Civil Rights Act, as set out at 25 USC Section 1302 and under the Blackfeet Tribal Law & Order Code.

The Defendant testified she plead guilty on at least two prior occasions and that she probably entered a guilty plea on each of the three DUI charges in Tribal Court. She also acknowledged that she had, in fact, consulted with these lay defenders on at least two of the three times she was charged in Tribal Court.

The State has notified the Defendant, by the filing of the

Information here, that upon conviction of the offense of Driving Or Operating a Motor Vehicle While Under the Influence of Alcohol, in violation of Section 61-8-401 MCA, that the State will seek imposition of a felony sentence pursuant to Section 61-8-714(4) MCA as a fourth or subsequent offense, based upon the prior convictions in the Blackfeet Tribal Court.

ISSUE PRESENTED

The issue before this Court is recognition of the three Blackfeet Tribal Court convictions as a basis for triggering enhanced felony status under Montana's current DUI law.

ARGUMENT

The Blackfeet Tribal Court is a sovereign Court of competent jurisdiction and its decisions must be recognized.

The Defendant, in her Motion to Quash and Brief, cites Section 61-8-714(6) MCA. That provision is as follows:

For the purpose of determining the number of convictions under this section, "conviction", as defined in Section 45-2-101, in this State, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in the state or another state, which forfeiture has not been vacated. Section 61-8-714(6) MCA.

Section 45-2-101(15) MCA defines conviction as follows:

"Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Section 45-2-101(15) MCA. (Emphasis added)

There is no doubt that the Blackfeet Tribe, of which Brenda Kipp is an enrolled member, is "court of competent jurisdiction".

Montana has not assumed criminal jurisdiction on the Blackfeet Reservation under P.L. 280 and the Indian Civil Rights Act. Fisher v. District Court, (1976) 424 U.S. 382, 96 S.Ct. 943, 47 L.Ed.2d 106; and see In Re Marriage of Wellman, 852 P.2d 559, 56___. Certainly, in this case, Brenda Kipp's behavior was governed by the rules and regulations of the Blackfeet Tribal Court and all proceedings conducted therein are amenable to recognition by this Court. See also, the decision in Agri West, a Montana Partnership, v. Kovama Farms, Inc., a Montana corporation, Montana Supreme Court No. 96-067. ___ Mont. ___, ___ P.2d ___ (Feb. 20, 1997). A copy is attached to this brief for the convenience of both Court and counsel. As noted in the Agri West decision, jurisdiction here lies, presumptively, with the Blackfeet Tribal Court. White Mountain Apache Tribe v. Bracker (1980) 448 U.S. 136, 142, 100 S.Ct. 2578, 2583, 65 L.Ed.2d 665, 672. Also citing Wellman, supra.

The State of Montana, as a matter of comity, has determined to recognize convictions handed down by the Blackfeet Tribal Court with respect to convictions in Blackfeet Tribal Court of its members. These conviction judgments must be given full faith and credit by this Court. Attacks upon those convictions must be brought in the Blackfeet Tribal Court and not in this Court.

ARGUMENT II.

The Blackfeet Tribal Court complied in all respects with its own rules and regulations, followed its own procedures and complied with the Indian Civil Rights Act.

The U.S. Congress, in 1968, adopted the legislation known as the Indian Bill of Rights. The Courts have repeatedly held that

basic rights accorded to all litigants in tribal court by the Indian Civil Rights Act are not coextensive with constitutional guarantees under the U. S. Constitution. In fact, the United States Constitution does not directly apply to Indian Tribes. Jacobson v. Forest County, Potawatomi Community, (D.C. Wis. 1974) 389 F.Supp. 994.

The Indian Civil Rights Act, at 25 USC 1302, sets out the provisions comparable to the Bill of Rights of the U.S. Constitution. 25 USC 1302(6) the provision comparable to the Sixth Amendment to the U. S. Constitution provides as follows:

"No Indian tribe in exercising powers of self-government shall - ...
(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;..."
25 USC 1302(6) (Emphasis added)

There is no comparable guarantee of right to counsel under the Indian Civil Rights Act. Congress, in enacting the Indian Civil Rights Act, intended to enhance civil liberties of individual Indians without unduly undermining Indian self-government and cultural autonomy. Means v. Wilson, (D.C. SD. 1974) 383 F.Supp. 378.

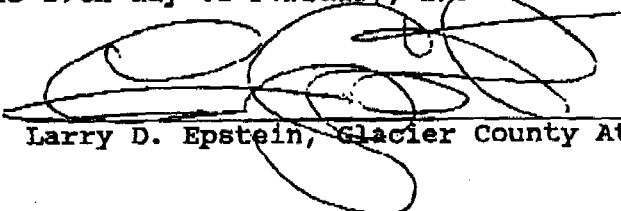
In Tribal Court, a defendant is entitled to have an attorney represent him at his own expense but is not entitled to have a court appointed attorney. U.S. v. Ant (C.A.9 Mont. 1989) 882 F.2d 1389.

SUMMARY

This Court must recognize the Blackfeet Tribal convictions of this Defendant, Brenda Kipp. Ms. Kipp is a member of the Tribe and amenable to that court's jurisdiction for offenses committed on the Reservation. Absent a showing of the violation of the Indian Civil Rights Act, those convictions are unassailable in this Court.

This Defendant was afforded every right to which she is entitled by the Blackfeet Tribal Court. By definition, her convictions are convictions that are and must be recognized by this Court as they were handed down in a Court of competent jurisdiction.

Dated this 27th day of February, 1997.



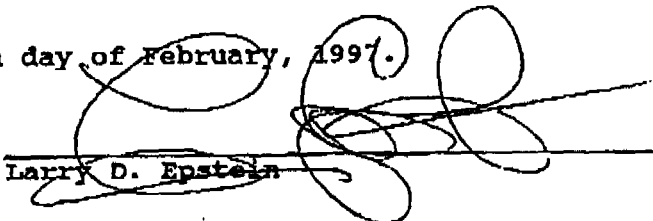
Larry D. Epstein, Glacier County Attorney**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that a copy of the foregoing was served upon the persons named below by mailing, hand-delivery, Federal Express or faxing to them a true and correct copy of said document.

☒ U.S. Mail ☐ Hand-delivery ☐ Federal Express ☐ Fax

Terryl Healy
Attorney at Law
310 E. Main
Cut Bank, MT 59427

Dated this 27th day of February, 1997.



Larry D. Epstein

FEB. 23. 1997 11:51PM

NO. 516 P. 2/13

No. 96-067

IN THE SUPREME COURT OF THE STATE OF MONTANA

1997

AGRI WEST, a Montana Partnership,

Plaintiff and Respondent,

vs.

KOYAMA FARMS, INC., a Montana
corporation,

Defendant and Appellant.

FILED

FEB 20 1997

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and for the County of Big Horn,
The Honorable Robert W. Holmstrom, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Charles F. Moses, Moses Law Firm, Billings, Montana;
Harold G. Stanton, Hardin, Montana

For Respondent:

Robert J. Waller, Billings, Montana

Submitted on Briefs: September 5, 1996

Decided: February 20, 1997

Filed:

Ed Smith
Clerk

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NO.516 P.3/13

Justice James C. Nelson delivered the Opinion of the Court.

This is an appeal from the Thirteenth Judicial District Court, Big Horn County. The District Court, after assuming jurisdiction, granted Plaintiff Agri West's motion for summary judgment and subsequently entered judgment for Agri West, awarding damages. From this judgment, Defendant Koyama Farms, Inc. appeals. We reverse and remand.

The following issues were raised on appeal:

1. Whether the District Court erred in sustaining the jurisdiction of the State District Court where the case between the parties was pending in the Crow Tribal Court?
2. Whether the District Court erred in finding jurisdiction in the State District Court where the subject matter of the action affected office and competent leases on the Crow Indian Reservation?
3. Whether the District Court erred in refusing to recognize the preemption doctrine and that this case was governed by federal statutes and regulations involving the leasing of Indian lands on the Crow Indian Reservation?
4. Whether the District Court erred in actually applying state law to the facts and circumstances of this case?

FACTUAL AND PROCEDURAL BACKGROUND

Agri West, is a Montana partnership engaged in farming operations in Big Horn County, including farming on the Crow Reservation. All Agri West partners are non-Indians. Koyama

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Farms, Inc. (Koyama) is a Montana corporation with its principal place of business in Big Horn County. Koyama is also engaged in farming operations on the Crow Reservation. All of Koyama's stockholders are non-Indian.

In August 1990, the Bureau of Indian Affairs (BIA) notified Agri West that Agri West was the high bidder on leases for specific tracts of land within the Crow Reservation and awarded Agri West five-year leases covering the subject allotments commencing October 1, 1990. Pursuant to this notification, Agri West began farming certain Indian trust allotments on the Crow Reservation in the fall of 1990. Agri West paid the rentals and planted a winter crop on the land in October 1990. The BIA prepared the leases and submitted them to Agri West for signature in February 1991. Agri West executed the leases and returned those to the BIA along with payment of the filing fees. During the summer/fall of 1991, Agri West harvested the 1991 winter wheat crop and planted a new crop. Additionally, Agri West paid the annual lease rental on October 1, 1991.

While these farming operations were underway, Agri West's leasing agent attempted to obtain signed copies of the leases from the BIA. However, the BIA informed Agri West's leasing agent that the allotments should have been leased as "competent" leases rather than BIA "office" leases. Accordingly, "competent" leases were prepared for signature by the Indian land owners and those owners were contacted to obtain their signatures.

In August 1992, Agri West harvested the 1992 winter wheat crop

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and planted a new crop in September 1992. In October 1992, one of the Indian landowners came to Agri West's leasing agent's office to request payment on the annual lease rental. Agri West's leasing agent gave the landowner copies of the "competent" leases and advised the land owner that Agri West would pay the rentals when the "competent" leases had been signed and returned. Later in October 1992, Agri West learned that the "competent" leases were executed in favor of Koyama. These leases were dated October 16, 1992, with effective dates of December 1, 1992.

Agri West continued to care for its crop throughout the fall of 1992 and the spring of 1993. On July 16, 1993, Koyama filed a civil complaint against Agri West in the Crow Tribal Court requesting an injunction be issued against Agri West. On August 10, 1993, prior to the time Agri West intended to begin harvesting, Koyama obtained an ex parte temporary restraining order from the Crow Tribal Court restraining Agri West from exercising dominion and control over the trust property and from harvesting the crop on that property. Subsequently, Koyama entered the property, harvested the crop and transported it to a storage facility in Big Horn County, off the Crow Reservation, where it remains.

On August 18, 1993, Agri West filed a complaint against Koyama in the Montana Thirteenth Judicial District Court claiming ownership of the 1993 winter wheat crop. On June 14, 1994, the District Court denied Koyama's motion to dismiss for lack of subject matter jurisdiction. Specifically, the District Court ruled that the state court had jurisdiction and was not preempted

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by federal law and that the exercise of jurisdiction would not infringe upon the right of the members of the Crow Tribe to make their own laws and be ruled by them. On March 21, 1995, the District Court granted Agri West's summary judgment, concluding that Agri West was the proper owner of the 1993 crop and that Koyama had converted that crop. On April 17, 1995, Koyama filed an amended complaint in the Crow Tribal Court. Subsequently, the District Court held a hearing concerning Agri West's damages. After the hearing, the District Court awarded Agri West damages in its judgment dated January 16, 1996. From this judgment, Koyama appeals. We reverse and remand.

STANDARD OF REVIEW

We review a district court's conclusions of law to determine whether the court's interpretation of the law is correct. *Carbon County v. Union Reserve Coal Co.* (1995), 271 Mont. 459, 469, 898 P.2d 680, 686 (citing *Steer, Inc. v. Department of Revenue* (1990), 245 Mont. 470, 474-75, 803 P.2d 601, 603).

In this case, the District Court concluded that its assumption of jurisdiction over an action involving a dispute between two non-Indian parties arising out of activities on the Crow Reservation was proper despite the Crow Tribal Court's previous assertion of jurisdiction over the case. We review this conclusion of law to determine whether the District Court properly interpreted the law governing state/tribal civil jurisdiction.

DISCUSSION

Whether the District Court erred in sustaining the

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jurisdiction of the State District Court where the case between the parties was pending in the Crow Tribal Court?

We hold that the District Court erred by sustaining jurisdiction in this action when the Crow Tribal Court had previously assumed jurisdiction over the parties and the subject matter of the dispute between Koyama and Agri West, and we reverse the District Court's legal conclusion to the contrary. Because this issue is dispositive, we will not address the remaining three issues raised on appeal.

On June 14, 1994, the District Court denied Koyama's motion to dismiss for lack of subject matter jurisdiction. In denying the motion, the District Court addressed the issue "whether tribal court jurisdiction preempts state court jurisdiction in a dispute between two non-Indian parties arising out of activities on Indian lands." The District Court noted that Montana has never assumed civil jurisdiction over Indian tribes pursuant to 25 U.S.C. § 1322, or any predecessor statute. Furthermore, the court acknowledged that, absent this assumption of jurisdiction, civil jurisdiction over activities on reservation lands involving non-Indians as well as Indians presumptively lies in the tribal court.

To determine whether Agri West had overcome this presumption, the District Court employed the White Mountain Apache Tribe v. Bracker jurisdiction test to determine whether state jurisdiction was proper. See Marriage of Wellman (1993), 258 Mont. 131, 137, 852 P.2d 559, 563 (citing White Mountain Apache Tribe v. Bracker (1980), 448 U.S. 136, 142, 100 S.Ct. 2578, 2583, 65 L.Ed.2d 665,

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672). After lengthy analysis, the District Court determined that state jurisdiction over this case was not preempted by federal law and did not infringe upon the right of reservation Indians to make their own laws and be ruled by them. Therefore, the District Court concluded that state jurisdiction over this action was proper.

Subsequently, on March 21, 1995, the District Court granted Agri West's motion for summary judgment, again asserting that state jurisdiction over this case was proper, and holding that Agri West was the owner of the winter wheat crop and that Koyama had converted the crop. Based on this determination, the District Court awarded Agri West damages in its judgment dated January 16, 1996.

Koyama argues that even if this case involved an issue over which the state and tribal courts shared concurrent jurisdiction, the District Court erred by sustaining jurisdiction because an identical case was pending in the Crow Tribal Court. Koyama contends that the first court to exercise concurrent jurisdiction retains jurisdiction to dispose of the entire case. Koyama asserts that the state of Montana has never asserted civil jurisdiction over the Crow tribal lands under 25 U.S.C. § 1322 and 28 U.S.C. 1360, and, therefore, the Crow Tribal Court has primary and exclusive jurisdiction over this controversy because it involves the leasing of Indian trust property.

Agri West responds that the issue in this case is not who possessed a valid lease for farming certain Indian trust property. Instead, Agri West contends that the controversy simply involves

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two non-Indians and concerns who is entitled to ownership of the 1993 winter wheat crop, presently located off the Crow Reservation. Agri West asserts that the rule of priority as to questions of concurrent jurisdiction does not apply here because no identity of parties, subject matter or relief exists between the two cases. Furthermore, even if the priority rule was originally applicable, it no longer applied once Koyama removed the crop from the reservation because that act divested the Crow Tribal Court of concurrent jurisdiction. Agri West, therefore, argues that the District Court properly assumed jurisdiction over this action.

We note that Koyama filed a civil complaint against Agri West in the Crow Tribal Court on July 16, 1993, requesting that the Tribal Court enjoin Agri West from exercising any dominion or control over the leased trust property and from harvesting any crop on the property. On August 10, 1993, the Crow Tribal Court issued a temporary restraining order and an order to show cause against Agri West. Only after the Crow Tribal Court assumed jurisdiction over this action by issuing the temporary restraining order did Agri West file a complaint against Koyama in the State District Court on August 18, 1993, for resolution of ownership of the crop. In response to this complaint, the District Court assumed jurisdiction despite the Crow Tribal Court's previous assumption of jurisdiction over this action. After reviewing the record and considering Montana law relating to state/tribal civil jurisdiction, we conclude that the District Court erred by sustaining jurisdiction in this action when the Crow Tribal Court

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had previously exercised jurisdiction over the action.

It is well settled that Indian tribes retain their inherent sovereign powers until Congress acts to circumscribe such powers. Wellman, 852 P.2d at 562 (citing United States v. Wheeler (1978), 435 U.S. 313, 323, 98 S.Ct. 1079, 1086, 55 L.Ed.2d 303, 313). Under Public Law 280, codified at 28 U.S.C. § 1360, Congress authorized state governments to unilaterally assume jurisdiction over civil causes of action to which a tribal member was a party and which arose within the boundaries of an Indian reservation. Subsequently, under the 1968 Indian Civil Rights Act, Congress repealed this authorization to unilaterally assume civil jurisdiction and thereafter required the consent of the majority of adult enrolled tribal members before a state could assume jurisdiction. Wellman, 852 P.2d at 562.

Montana has not assumed civil jurisdiction on the Crow Reservation under Public Law 280 and the Indian Civil Rights Act. See Wellman, 852 P.2d at 562-63. Absent this assumption of jurisdiction, civil jurisdiction over activities of non-Indians as well as Indians on reservation lands lies presumptively in the tribal court. Wellman, 852 P.2d at 563 (citing Fisher v. District Court (1976), 424 U.S. 382, 96 S.Ct. 943, 47 L.Ed.2d 106). Furthermore, we routinely treat tribal court judgments with the same deference shown decisions of foreign nations, as a matter of comity. Wippert v. Blackfeet Tribe (1982), 201 Mont. 299, 304, 654 P.2d 512, 515 (citing State ex rel. Stewart v. District Court (1980), 187 Mont. 209, 609 P.2d 290; In re Marriage of Limpy

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(1981), 195 Mont. 314, 636 P.2d 266) (other citations omitted).

In both Stewart and Limpy, we applied the doctrine of abstention, as a matter of comity. In Stewart, because the Crow Tribal Code gave the Crow Tribal Court exclusive jurisdiction over dissolution of marriage actions between tribal members residing within the exterior boundaries of the reservation, we held that as a matter of comity we should abstain from asserting jurisdiction over actions of this kind. Stewart, 609 P.2d at 292. By doing so, we hoped to "reduce the 'inter-governmental friction' likening the 'competing interests' of the State and the tribes to a 'Pullman type abstention situation.'" Stewart, 609 P.2d at 292 (citations omitted).

Subsequently, in Limpy, we again applied the doctrine of abstention as a matter of comity by deferring to a Northern Cheyenne advisory opinion holding that the Northern Cheyenne Tribal Court had exclusive jurisdiction over dissolution of marriage actions between members of the Tribe residing within the Reservation. Limpy, 636 P.2d at 269. In fact, we abstained despite the fact that the Northern Cheyenne Tribal Court had not attempted to exercise jurisdiction over the specific case then on appeal. Rather, we noted that the tribal court had exercised jurisdiction in similar cases which indicated "a disposition to preempt State jurisdiction." Limpy, 636 P.2d at 269. Furthermore, we could find no policy reason to justify a state court's assumption of jurisdiction to the exclusion of the tribal court. Limpy, 636 P.2d at 269.

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The procedural history of the case before us is analogous to that of Stewart and Limpy. As discussed above, when a tribal court asserts jurisdiction over certain causes of action, we defer to that assertion by applying the doctrine of abstention as a matter of comity. If the parties contest the tribal court's assertion of jurisdiction, then it is appropriate that they raise and litigate that issue in the tribal court. A court has the judicial power to rule on the question of its own jurisdiction. *Karr v. Karr* (1981), 192 Mont. 388, 407, 628 P.2d 267, 277. We conclude that, in the case at bar, the Crow Tribal Court explicitly asserted jurisdiction over this action by issuing a temporary restraining order against Agri West. Therefore, just as in Stewart and Limpy, abstention as a matter of comity is proper under the procedural history of this case.

Furthermore, we reject Agri West's argument that, under the procedural history of this case, the Crow Tribal Court lost jurisdiction over Koyama and Agri West when the crop was removed from the Crow Reservation. Koyama initiated this action in the Crow Tribal Court and the Crow Tribal Court responded by assuming jurisdiction and issuing a temporary restraining order against Agri West, preventing Agri West from harvesting the 1993 winter wheat crop. The fact that Koyama harvested this crop on the reservation, but then stored it off the Crow Reservation did not automatically divest the Crow Tribal Court of the jurisdiction which it had already asserted. Again, if Agri West contests the jurisdiction of the Crow Tribal Court to rule on the ownership of the crop then

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this jurisdictional issue must be litigated in the court that first asserted jurisdiction--i.e., the Crow Tribal Court--and not in the State courts.

Accordingly, we hold that the District Court erred by sustaining jurisdiction in this action when the Crow Tribal Court had previously assumed jurisdiction over the parties and the subject matter of the dispute between Koyama and Agri West.

Reversed and remanded for further proceedings consistent with this opinion.


Justice

We Concur:

Karla M. Asay
For/Treasurer
William Lybent
Justices

St. J. Kipp

TERRYL T. HEALY
 Attorney -at -Law
 310 East Main
 Cut Bank, MT 59427
 Telephone: (406) 873-4833

COPY

Attorney for Defendant

MONTANA NINTH JUDICIAL DISTRICT COURT, GLACIER COUNTY

STATE OF MONTANA,	)	Case No. DC 96-65
	)	
Plaintiff,	)	JUDGE MARC G. BUYSKE
	)	
vs.	)	
	)	
BRENDA KIPP,	)	BRIEF IN SUPPORT OF
	)	MOTION TO QUASH
Defendant.	)	
-----	)	

COMES NOW Terryl Healy, Counsel for the above-named defendant, and
 does hereby file this Brief in Support of the Motion to Quash.

INTRODUCTION

The Blackfeet Tribe is a federally recognized Indian tribe located in the state of Montana. The Montana State legislature in 1955 enacted 61-8-401 and 61-8-714. In 1985 the legislature amended 61-8-714 to include out-of-state convictions. In this case Brenda Kipp plead guilty to Driving Under the Influence in 1990, 1992 and 1994 in Blackfeet Tribal Court.

ARGUMENT

A. THE MONTANA STATUTE, 61-8-714(6), MCA, IS CLEAR ON ITS FACE; IT DOES NOT INCLUDE A TRIBAL COURT CONVICTION FOR THE PURPOSES OF DETERMINING WHETHER A DUI IS A FELONY

The question in this case is whether the statute, 61-8-714(6) MCA, includes a tribal court conviction. The defendant submits the statute does not and that it is clear on its face. The statute provides:

For the purpose of determining the number of convictions under this section "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or in a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated."

MCA 61-8-714.

The Montana Supreme Court has stated that when analyzing statutory law courts look first to the plain meaning of the statute, and if that is unclear, then courts look to legislative history. Carbon County v. Dain Bosworth, Inc., 874 P.2d 718, 722 (1994). Thus, the Montana Supreme Court has made it clear that before going to legislative history the rules of statutory construction require the court to construe or interpret a statute in accordance with the intention of the legislature. State v. Christensen, 877 P.2d 468, 469 (1994); Prillaman v. Community Medical Center, 870 P.2d 82, 84 (1994); Lodge Grass High School v. Hamilton, 871 P.2d 890, 892 (1994). Therefore, the court must first look to the plain meaning of the statute and if the language is plain, unambiguous, direct, and certain, the statute speaks for itself and there is no need to resort to a legislative history. *Id.* at 469.

The Montana Supreme Court, has had an occasion to review the above-mentioned statute as far as whether the State of Montana can revoke a person's drivers license because of a conviction from another state. Montanye v. State, 50 St.Rep. 1541, 1544 (1993). The Court stated the New York state statute in question

was similar to Montana's. Further, the Court stated the Montana Drivers License Compact provisions allowed for suspension of a resident's license upon conviction in another state.

The issue in this case is different from Montanye. In Montanye the issue was whether the conviction for Driving While Impaired in the *state* of New York was similar to a DUI conviction in the *state* Montana. In this case the convictions at issue are not a state court conviction but a tribal court conviction. Therefore, the decision in Montanye is not controlling.

A review of the statute shows that the language of the statute is plain, clear and unambiguous. The statute on its face gives no indication that the legislature intended to include tribal convictions in the definition of the term *state*.

However, should the court find that the language of the statute is not clear on its face a review of the legislative history would be necessary.

A review of the legislative history of this statute shows that in 1985 the Montana legislature amended 61-8-714(6). The reason for this amendment, according to the House Judiciary minutes, was to allow the State of Montana to consider out of state convictions. The bill was considered and discussed by the House Judiciary committee at some length. Absent from these discussions is any mention of the recognition of a tribal court conviction. If the Montana legislature had intended to include tribal court convictions they would have said included or defined a state conviction to include a tribal court conviction. This statement is supported by past actions of the legislature. For example, in 1995 the Implied Consent Law did not allow for the Montana Department of Motor Vehicles to accept

a license taken from an individual who refused to consent to a breath test. The legislature changed this statute to include tribal refusals.

B. THE STATUTE, 61-8-714, REFERENCE TO A STATE CONVICTION DOES NOT INCLUDE A TRIBAL CONVICTION MERELY BECAUSE THE TRIBE IS WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE STATE.

For purposes of state jurisdiction, it does not extend into Indian Country except in a few narrowly defined areas. Yellowstone County v. Pease, 96 F.3d 1169, 1176-1177 (1996). Indian Country is defined at 18 USC 1151 which includes the following: 1) land within the limits of any Indian reservation; 2) dependent communities; 3) Indian allotments. Indian Country, U.S. A. v. Oklahoma Tax Comm'n, 829 F.2d 967, 973 (10th Cir, 1987), cert denied, 487 U.S. 1218 (1988). See also, U.S. v. Wheeler, 435 U.S. 313, 323, 98 S.Ct. 1079, 1086, 55 L.Ed.2d 303, 313 (1978), wherein the United States Supreme Court that Indian tribes are self-governing political entities who retain their existing sovereign powers. The United States Supreme court reaffirmed the importance of the use of the statutory definition of Indian country in civil, as well as criminal jurisdiction contexts. Oklahoma Tax Comm'n v. Sac and Fox Nation, 113 S.Ct. 1985 (1993).

The state of Montana through case law and statutory law recognized that its laws do not automatically include the seven Indian reservations merely because they geographically lie within the state's boundaries. In re the Support Obligation of Stuart Anthony Day v. State, 52 St.Rep. 680, 682 (1995), quoting Wippert v. Blackfeet Tribe, 201 Mont. 299, 654 P.2d 512, (1982); 61-8-402(7). The Court in Wippert stated, "[M]ontana treats tribal court judgments with the same deference shown

foreign nations as a matter of comity." Wippert, 654 P.2d at 515. The Court in Day went on to further explain that the Federal Child Support Act defined a "state" to include an Indian Country. Day, 52 St.Rep. at 682.

Therefore, because the United States Supreme Court and the Montana Supreme Court have held that Tribes are separate entities, the Montana legislature needed to specifically refer to tribal court convictions when stating which convictions could be recognized by the state.

CONCLUSION

Defendant asserts that the language of 61-8-714(6), MCA, is clear on its face and it is unnecessary to resort to other means of interpretation. Section 61-8-714(6), MCA, refers to state convictions not tribal court convictions thus the state is foreclosed from using the tribal court convictions for purposes of charging the defendant with the Fourth DUI, a felony.

DATED this 3 day of March, 1997.


Terry T. Healy

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing, postage prepaid, by U.S. mail, this 3 day of March, 1997, to the following:

LARRY D. EPSTEIN
Glacier County Attorney
14 E. Main, P.O. Box 428
Cut Bank, MT 59427

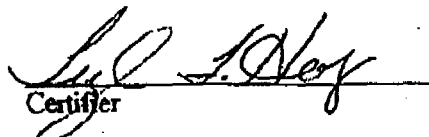

Certifier

EXHIBIT 4
DATE 3/4/97
HB 559

HB 559 - Revision and Recodification of Driving under the Influence and Excess Alcohol Concentration Penalties

Prepared by Brenda Nordlund
Department of Justice

HB 559 does four things:

1. It permits a court to revoke the suspended sentence of a DUI or BAC conviction and require a defendant to serve the remaining portion of the suspended sentence in jail if the defendant fails to comply with the current law one-year monitoring requirement following admission to an alcohol or drug treatment program. The court may also extend the monthly monitoring period for up to an additional six months.

Page 16, lines 12 through 14.

2. It eliminates the requirement that the Department of Justice treat DUI and BAC conviction records after five years as confidential criminal justice information. Under current law, a driver can't even receive a complete copy of his or her own lifetime driving record if it includes DUIs or BACs older than five years without a court order.

Page 11, lines 19-22 and page 13, lines 22 through 26.

3. It expressly allows convictions on federal enclaves (military reservations, national parks) and convictions from tribal court to be counted in determining the number of prior DUIs or BACs and codifies the current practice that recognizes the reporting of traffic convictions from tribal court and federal enclaves.

Page 15, lines 4 through 7, and page 17, lines 5 through 8.

4. The remainder of the bill simply restructures existing DUI and BAC penalty statutes to group penalties that apply to either a DUI or a BAC topically, i.e., one section for ACT and treatment provisions (section 9); one section for vehicle forfeitures (section 10); and one section for miscellany - defining conviction, how to count number of convictions, place of imprisonment, no deferral of sentencing, etc. (section 11).

See attached Guide to Recodification of Mont. Code Ann. § 61-8-714 and 61-8-722

House Corrections
March 4, 1997

GUIDE TO RECODIFICATION OF Mont. Code Ann. § 61-8-714 AND 61-8-722

Prepared by Brenda Nordlund
Department of Justice

<i>Current Law</i>	<i>Section</i>	<i>HB 559 Location in bill</i>
61-8-714(1)	6	p. 9 lines 8-14 (internal references deleted; 24 hour minimum sentence inserted)
61-8-714(2)	6	p. 9, lines 15-21 (internal references deleted; 48 hour minimum sentence inserted)
61-8-714(3)(a)	6	p. 9, lines 22-29 (internal references deleted; 48 hour minimum sentence inserted)
61-8-722(1)	7	p. 12, lines 8-10 (internal reference deleted)
61-8-722(2)	7	p. 12, lines 11-13 (48 hour minimum to be served in county jail, not home arrest)
61-8-722(3)(a)	7	p. 12, lines 15-18 (48 hours minimum to be served in county jail, not home arrest)
61-8-714(3)(b)(i)-(iii) 61-8-722(3)(b)(i)-(iii)	10	p. 16, lines 16-29

61-8-714(4) 61-8-722(4)	6	p. 10, lines 12-17 (internal references deleted)
61-8-722(5)	11	p. 17, lines 27-29, (references to 61-2-107 and 61-2- 302 added; also applies to DUI convictions)
61-8-714(5) 61-8-722(6)	9	p. 15, line 9 thru p. 16, line 11 (lines 12-14 new language)
61-8-714(6) 61-8-722(7)	11	p. 17, lines 1-12
61-8-714(7) 61-8-722(8)	11	p. 17, lines 13-15
61-8-714(8) 61-8-722(9)	11	p. 17, lines 16-22
61-8-714(9) 61-8-722(10)	11	p. 17, lines 23-25 (subject to 24/48 hour minimums in 61-8-714, -722)
61-8-714(10) 61-8-722(11)	11	p. 17, line 26

HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL

DATE 3/4/97

[illegible]

MONTANA HOUSE OF REPRESENTATIVES SELECT COMMITTEE ON CORRECTIONS VISITOR REGISTER

DATE: March 4, 1997

BILL NUMBER: HB 559

SPONSOR: GRIMES

Please indicate your position below:

PROPONENT (P)

OPPONENT (O)

INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

☒ P O I	Charles Brooks	Billings	DUI Task Force
☒ P O I	Ann Gregory P Mohr	Sidney	DUI Task Force
☒ P O I	Harriet Hansen	Billings	DUI Task Force
☒ P O I	Dianna Stanley	Billings	DUI Task
☒ P O I	Brenda Nordlund	Helena	MT Dept of Justice
☒ P O I	August Bent	Billings	MT Task Force & Billings
☒ P O I	Serry Archer	Billings	Billings Police
☒ P O I	Mike Ruppert	Helena	Chemical Depend Treatment
☐ P O I			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

SB 106

{Tape: 2; Side: B; Approx. Time Count: 35.6.}

MOTION/VOTE: REP. MENAHAN MOVED SB 106 BE CONCURRED IN. Motion carried 9-1 with SEN. SWYSGOOD voting no.

SB 222

{Tape: 2; Side: B; Approx. Time Count: 37.6.}

MOTION: REP. MENAHAN MOVED SB 222 BE CONCURRED IN.

DISCUSSION

SUBSTITUTE MOTION: REP. McGEE MOVED SB 222 BE TABLED.

{Tape: 2; Side: B; Approx. Time Count: 39.5.}

DISCUSSION

SUBSTITUTE MOTION WITHDRAWN.

{Tape: 3; Side: A; Approx. Time Count: 3.1.}

VOTE: Motion carried 7-3 with REP. VICK, REP. McGEE and REP. KASTEN voting no.

HB 559

{Tape: 3; Side: A; Approx. Time Count: 4.0.}

MOTION: REP. KASTEN MOVED HB 559 DO PASS.

MOTION/VOTE: REP. KASTEN MOVED THE AMENDMENTS AS REVISED BY BRENDA NORDLUND. HB 055901. Motion carried 10-0.

MOTION/VOTE: REP. KASTEN MOVED HB 559 DO PASS AS AMENDED. Motion carried 8-2 with REP. WYATT and SEN. SWYSGOOD voting no.

SB 303

{Tape: 3; Side: A; Approx. Time Count: 5.9.}

MOTION\VOTE: REP. MENAHAN MOVED SB 303 BE CONCURRED IN. Motion carried 10-0.

COMMITTEE BUSINESS

{Tape: 3; Side: A; Approx. Time Count: 6.5.}



HOUSE STANDING COMMITTEE REPORT

March 10, 1997

Page 1 of 4

Mr. Speaker: We, the committee on Select Committee on Corrections report that House Bill 559 (first reading copy -- white) do pass as amended.

Signed: _____

Ernest Bergsagel, Chair

And, that such amendments read:

1. Page 6, line 19.
Following: "]"
Insert: "[section 13]"
2. Page 7, line 19.
Following: "]"
Insert: "[section 13]"
3. Page 7, line 27.
Following: "]"
Insert: "[section 13]"
4. Page 10, line 13.
Following: "punished"
Insert: "["
5. Page 10, line 14.
Following: "\$10,000"
Insert: "]" [as provided in section 13]"
6. Page 15, line 11.
Following: "61-8-722"
Insert: "[and section 13]"
7. Page 17, line 16.
Following: "(2)"
Insert: "[Except as provided in section 13]"

Committee Vote:
Yes 8, No 2.

521422SC.Hgd

St. 47
3-10-97

8. Page 17, line 26.
Following: "61-8-722"
Insert: "[or section 13]"

9. Page 18, line 1.
Following: "**instruction.**"
Insert: "(1)"

10. Page 18, line 4.
Insert: "(2) If [sections 13 and 14] are effective, then they are intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 7, part 8, apply to [sections 13 and 14].

NEW SECTION. **Section 13. Coordination.** (1)(a) If House Bill No. 100 and [this act] are both passed and approved, then House Bill No. 100 is void, the bracketed references to "section 13" in [this act] are effective, the bracketed phrase referring to the term of imprisonment and a fine for a fourth conviction in 61-8-714 is void, and a new section 13 is added to [this act] that reads:

"NEW SECTION. **Section 13. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense.** (1)(a) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person shall be punished by imprisonment for a term of not less than 6 months or more than 13 months and by a fine of not less than \$1,000 [\$1,500] or more than \$10,000. The imposition or execution of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for parole.

(b) The court shall:
(i) specify one of the following facilities as the place in which the initial term of imprisonment must be served:
(A) a state prison;
(B) a regional correctional facility;
(C) a county jail;
(D) a boot camp, provided the prior approval of the department of corrections has been obtained;
(E) a prerelease center, provided the prior approval of the department of corrections has been obtained; or
(F) a state-approved public or private treatment facility;
or
(ii) sentence the person to the department of corrections for placement in an appropriate correctional institution or program.

(c) Following initial placement of a defendant in the

facility specified by the court in accordance with subsection (1)(b)(i), the department of corrections may, at its discretion, place the offender in another facility or program.

(2)(a) After serving the term of imprisonment imposed under subsection (1)(a), the person shall serve a supervised release term of not less than 1 year or more than 2 years. The release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the supervised release.

(b) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:

- (i) conditions for supervised release;
- (ii) payment of a fine as provided in 46-18-231;
- (iii) payment of costs as provided in 46-18-232 and 46-18-233;
- (iv) payment of costs of court-appointed counsel as provided in 46-8-113;
- (v) community service;
- (vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
- (vii) any combination of the restrictions or conditions listed in subsections (2)(b)(i) through (2)(b)(vi).

(c) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (1)(b). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (1)(b) with all or part of the time already served on supervised release.

(3) The court shall order a person who is financially able to pay the costs of imprisonment and supervised release under this section and of the information course and treatment under [section 9]."

(b) If House Bill No. 100 and [this act] are not passed and approved, then the bracketed references to "section 13" in [this act] are void.

(2) If House Bill No. 208 and [this act] are both passed and approved, then the bracketed amount in [section 13] of [this act] is effective and a new section 14 is added to [this act] that reads:

"NEW SECTION. Section 14. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration

March 10, 1997

Page 4 of 4

-- no suspension of fines -- community service as payment. (1)
Except upon written findings of extenuating and mitigating
circumstances by the court, no fine imposed under 61-8-714, 61-8-
722, or [section 13] against a defendant convicted of a violation
of 61-8-401 or 61-8-406 may be suspended.

(2) If the court determines that the person is unable to
pay the fine, the court may sentence the person to supervised
community service."

Renumber: subsequent section

-END-

521422SC.Hgd

HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL

DATE.

3/7/97

[illegible]

give the judge some discretion we should put an amendment in this bill. Ms. Nordlund That is correct.

SEN. MOHL If I have 4 DUI's, can I get a drivers license again after completing my sentence? Ms. Nordlund Yes, depending upon the time period within which your DUI's were committed, you will be treated as a second or subsequent offender or a first offender for drivers license purposes. You have to finish your treatment if you are a second or subsequent offender before we give you full reinstatement. You also have to, at least, complete 3 months of a 1 year revocation. Then we can give you a probationary drivers license and you must pay the reinstatement fee of \$100.

SEN. CHRIS CHRISTIAENS How does workers' compensation work for community service? REP. MARSHALL I was told the judge collects enough from the client to pay for workers' compensation. SEN. CHRISTIAENS How is that distributed to the agency or organization that is providing the supervised community service? REP. MARSHALL The fine goes to the jurisdiction. SEN. CHRISTIAENS The reason I asked the question is that when you are talking about a \$1,500 fine that will be worked off in community service you are talking about a lot of hours at minimum wage that has a huge exposure for a worker's compensation claim.

SEN. LYNCH Would you have an objection if we made the fine 5% of their previous years net income so we hit everyone equally? REP. MARSHALL I don't think I could object to anything you suggested.

Closing by Sponsor:

REP. MARSHALL I am trying to make it too expensive for people to drink and drive. I tried not to infringe on any other rules. I hope you look on this bill with approval.

{Tape: 2; Side: A; Approx. Time Count: 9:39; Comments: None.}

HEARING ON HB 559

Sponsor: REP. DUANE GRIMES, HD 39, CLANCY

Proponents: Brenda Nordlund, Department of Justice
Dave Ohler, Department of Corrections
Mike Grouper, Boyd Andrew Chemical Dependency Care
Center
Charles Brooks, State DUI Task Force

Opponents: REP. GEORGE HEAVY RUNNER, HD 85, BROWNING

Opening Statement by Sponsor:

REP. DUANE GRIMES, HD 39, CLANCY Last session we were faced with an increasing DUI problem and, in trying to figure out how to

solve the problem, we implemented year long monitoring after mandatory counseling. Currently, people convicted on a 6-month suspended sentence go for 6 months of monitoring and then quit. HB 559 closes that loophole by having the suspended sentence reapplied. The bill also opens up records past 5 years and recodifies items in the law. This will give law enforcement another tool to do their job.

{Tape: 2; Side: A; Approx. Time Count: 9:43; Comments: None.}

Proponents' Testimony:

Brenda Nordlund, Department of Justice This is one of four DUI task force bills that was introduced this session and should be the least controversial of them. (EXHIBIT #5) handed out and explained.

Dave Ohler, Department of Corrections The department supports HB 559.

Mike Grouper, Boyd Andrew Chemical Dependency Care Center I am a member of the state DUI task force and a recovering alcoholic with 18 years of continuous sobriety. I'd be happy to answer any questions you may have.

Charles Brooks, State DUI Task Force I'm representing the task force and Harold Hanzer. Letter from Mr. Hanzer (EXHIBIT #6) and Gregory Mohr (EXHIBIT #7) handed out. I encourage the passage of HB 559.

Opponents' Testimony:

REP. GEORGE HEAVY RUNNER, HD 85, BROWNING I rise in reluctant opposition to HB 559. I know the intent of this bill but I think we are putting the cart before the horse. This is another example of the necessity of working something out between the tribe and the state. Just because language is inserted in a bill doesn't necessarily mean that the tribe is obligated to follow it. State law only prevails if the tribe allows it. We need to look at when state and tribal laws start and stop to make this a mutually beneficial agreement. We might want to strike the language referring to the tribal courts. I would like my reservation to sit down with DOJ and work on these issues to develop a model for this application to occur on the reservation. This would be a way to address the jurisdictional issues.

{Tape: 2; Side: A; Approx. Time Count: 10:00; Comments: None.}

Questions From Committee Members and Responses:

SEN. LYNCH You said this bill is a great tool for the defense, what does it do for the insurance company? **Ms. Nordlund** Title 33, which governs insurance companies, prohibits them from using information that is older than 3 years for purposes of rate

setting and determining premiums. This bill does not affect Title 33.

SEN. LYNCH Is this new stuff on page 9? **Ms. Nordlund** It is not new, it is the consolidation of current law language.

SEN. TAYLOR What is the cost per day for treatment? How long do you think it would take, on an average, to get someone off drugs or alcohol? **Mr. Grouper** The average daily cost is based on income, we charge by the session. The least we charge is zero. In-patient treatment, usually of 1 month duration, is the most effective, followed with aftercare, usually for 3 months. Multiple offenders would follow up with monthly monitoring. Generally anything worthwhile will be done in a 4 month period.

SEN. TAYLOR How does the Blackfeet Nation handle a 3 DUI offender? Do they send them away and pay for treatment? **REP. HEAVY RUNNER** As I understand it, part of the judgement is remanding the individual to a treatment center, depending on availability. I'm trying to find out when the tribe legislatively recognized state DUI's. It might be unclear as to whether the DUI occurred off or on the reservation. If that legislative process is not in place an individual could argue that the past records of something that happened off the reservation cannot be recognized. I can get that information to you. **SEN. TAYLOR** I would like to know what the Blackfeet Nation does with their own people who have been convicted of driving under the influence of alcohol or drugs and how many there have been. **REP. HEAVY RUNNER** I'd be glad to try and get that information. As you know, the rates of alcoholism on the reservation are quite high. The services that are available to address those frequently have waiting lists and repeat people.

SEN. WATERMAN Do a number of courts recognize the booking period as part of the 24 hours referred to on page 9? **Ms. Nordlund** On a first offense, that is correct if they are going to consider the aggregated loss of liberty. On a second offense, the 48 hours must be served consecutively.

{Tape: 2; Side: A; Approx. Time Count: 10:11; Comments: None.}

SEN. CHRISTIAENS I'm confused with your answer to **SEN. WATERMAN** regarding the 24 hour service. I ran a DUI program and ours was 24 hours, not anything less. **Ms. Nordlund** The minimum requirement is 24 hours. The person who is going to determine whether that 24 hours has been met is the court. If the court wants to credit the time spent in booking or overnight, that may be within the courts prerogative for the first offense. It cannot be used for the 48 hour consecutive requirement for second or subsequent offense.

SEN. MAHLUM Can you give me the percentage between DUI and DUD? **Ms. Nordlund** I don't have that information off the top of my head. I suspect it is fairly negligible in terms of actual

prosecutions as a DUID, which is driving under the influence of drugs. Approximately 40% of our coroners fatalities are individuals who showed drug positive and 39% of those individuals whose blood has been sent to the lab for alcohol will also show a positive drug presence. **SEN. MAHLUM** Do you have a test for drugs? **Ms. Nordlund** Under current law, we have to give an alcohol test first. If they register less than 1.0 on that test then we are able to request a drug test. We take them to the hospital for a blood test which is sent to the lab for analysis. Urine can be used as a means of detecting presence of drugs in the body. However, law enforcement does not use urine specimens as it is not a good sample for the prosecution of this particular offense.

SEN. LYNCH I'm a little confused about your objections. Page 15 states a tribal court may report. It seems to me that gives you the discretion you would like to negotiate with the state or local law enforcement. **REP. HEAVY RUNNER** My opposition is to the inclusion of the tribal courts. I would hope this would be done through a process where they sit down and discuss how the reporting will be done. **SEN. LYNCH** The word may rather than must or shall gives you that latitude. Why would I oppose this bill on your behalf, if I think you have the latitude in it? **REP. HEAVY RUNNER** That is your call. I think it is interesting that the state gives their blessing for the tribe to "may report". With a government to government relationship it would be nice if they sat down to work out the reporting. I would like to have the references to tribes removed until we can get individual cooperative agreements in place.

{Tape: 2; Side: A; Approx. Time Count: 10:20; Comments: None.}

SEN. CHRISTIAENS The new language on page 17, lines 8-11 may be another area of concern for **REP. HEAVY RUNNER**. **Ms. Nordlund** I see this language as essential for the policy makers of the State of Montana, to define what we are going to count for purposes of our prosecution of DUI's. There might have been a better way to phrase the language on page 15. We never intended to usurp authority from the tribal nations. We want to work with those tribes who want us to record their traffic convictions, not all report to us. I'd be happy to draft an amendment to deal with the record keeping section. I urge the committee not to change the conviction count because that serves a different purpose. I agree that we can work government to government on these issues.

SEN. LYNCH I don't like section 13 that states we live without any amendments to HB 100. Is the way I am reading that correct? That if this passes HB 100 doesn't matter, blue collar will get the business. **Ms. Nordlund** When the House heard this bill, it was my task to try and coordinate all the bills. The style of this bill is radically different than current law. Section 13 is for coordination purposes. The substance of section 13 & 14 is no different than HB 100 as it was brought to you today. It merely reorganizes it in a fashion that comports with the recodification of HB 559. Whatever you change in HB 100 will

have to have commensurate changes in the coordination language.
SEN. LYNCH If we pass HB 100 amended and pass this as is; would the code commissioner codify them so they all got together in the end? **Susan Fox, Legislative Services Division** If you amend HB 100 you probably should amend the coordination instructions accordingly to make them work together. If you didn't, **Greg Petesch** would have to.

SEN. TAYLOR Can an individual who has lost their drivers license in one state because of DUI's come to Montana and not have a record? **Ms. Nordlund** No. We have interstate compacts that allow the reporting and recognition of other states records. (EXHIBIT #8) handed out.

{Tape: 2; Side: B; Approx. Time Count: 10:27; Comments: None.}

Closing by Sponsor:

REP. GRIMES I would prefer that you consider **REP. HEAVY RUNNER'S** amendments. I ask the committee to help make this work so we can see if year long monitoring does some good for the State of Montana.

GUIDE TO RECODIFICATION OF Mont. Code Ann. § 61-8-714 AND 61-8-722

Prepared by Brenda Nordlund
Department of Justice

<i>Current Law</i>	<i>Section</i>	<i>HB 559</i>
		<i>Location in bill</i>
61-8-714(1)	6	p. 9 lines 8-14 (internal references deleted; 24 hour minimum sentence inserted)
61-8-714(2)	6	p. 9, lines 15-21 (internal references deleted; 48 hour minimum sentence inserted)
61-8-714(3)(a)	6	p. 9, lines 22-29 (internal references deleted; 48 hour minimum sentence inserted)
61-8-722(1)	7	p. 12, lines 8-10 (internal reference deleted)
61-8-722(2)	7	p. 12, lines 11-13 (48 hour minimum to be served in county jail, not home arrest)
61-8-722(3)(a)	7	p. 12, lines 15-18 (48 hours minimum to be served in county jail, not home arrest)
61-8-714(3)(b)(i)-(iii) 61-8-722(3)(b)(i)-(iii)	10	p. 16, lines 16-29

61-8-714(4) 61-8-722(4)	6	p. 10, lines 12-17 (internal references deleted)
61-8-722(5)	11	p. 17, lines 27-29, (references to 61-2-107 and 61-2- 302 added; also applies to DUI convictions)
61-8-714(5) 61-8-722(6)	9	p. 15, line 9 thru p. 16, line 11 (lines 12-14 new language)
61-8-714(6) 61-8-722(7)	11	p. 17, lines 1-12
61-8-714(7) 61-8-722(8)	11	p. 17, lines 13-15
61-8-714(8) 61-8-722(9)	11	p. 17, lines 16-22
61-8-714(9) 61-8-722(10)	11	p. 17, lines 23-25 (subject to 24/48 hour minimums in 61-8-714, -722)
61-8-714(10) 61-8-722(11)	11	p. 17, line 26

HAROLD F. HANSER
ATTORNEY

TRANSWESTERN I, RM 127
404 N. 31ST ST.
BILLINGS, MT 59101

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 6
DATE 3/18/97
BILL NO. HB 559

OFFICE (406) 255-7183
RESIDENCE (406) 259-9855

Fax to Charles Brooks 442-2409

March 17, 1997

Senate Finance and Claims Committee

RE: HB 559

This legislation was recommended by the State DUI Task Force. Several lower court judges and alcohol counselors pointed out that under the existing law, many offenders have not completed treatment upon the expiration of the court's jurisdiction [six months]. There is no way to require the offender to complete the treatment.

The basic thrust of HB 559 is to extend the jurisdiction to one year for first offenders in order to give effect to the intent of the law requiring treatment. Some of the other provisions are more in the nature of housekeeping to provide consistency in the state's record function. Brenda Nordland, assistant attorney general will explain those to the committee.

I believe I am stating a Task Force consensus in telling the committee that from our perspective, treatment for those requiring it, is just as important to controlling the DUI problem as is education, arrest, prosecution and sentencing. Two years ago the legislature, [a State DUI Task Force proposal], required treatment for first offenders who were determined to need it. The jurisdictional limit was six months, and as indicated this proved to be inadequate. From a long term public safety perspective, treatment is clearly one of the necessary tools to lower the incidents of multiple DUI arrests.

We would urge your approval of HB 559

Yours very truly,



Harold F. Hanser
Chairman, State DUI Task Force

FROM : LEC

MAR. 17. 1997 4:39PM P 1
PHONE NO. : 406 482 4766

GREGORY P. MOHR
Richland County Justice of the Peace
123 West Main - Sidney, MT 59270
(406) 482-2815

SENT TO: JUDGE AND CLERKS
EXHIBIT NO. 7
DATE 3/18/97
BILL NO. HB 559

To: Senator Charles Swysgood
Chairman Senate Finance Committee
Re: HB 559

Dear Senator Swysgood,

This letter is written in support of HB 559. I testified on this bill back on the 4th of March 1997. HB 559 will give we judges the tools needed to deal with defendants that have had at least two DUI violations on their records and have shown that they are not going to change their habit of not paying attention to their problem. Before this bill was introduced a defendant with a second offense DUI could and most often did do the bare minimum required by the law to pass cursory inspection and then knowing that the court only had 6 months to enforce their sentence which included the 1 year monitoring period would simply walk away from the monitoring knowing that the court was powerless to enforce the sentence. I urge the passage of HB 559 so the courts will be able to enforce the sentences the legislature has set for them.

Thank You
Sincerely,


Gregory P. Mohr
Justice Of The Peace
City Judge

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE

ROLL CALL

DATE

3/18/97

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHUCK SWYSGOOD, CHAIRMAN			✓
SEN. TOM KEATING, VICE CHAIRMAN	✓		
SEN. LARRY BAER	✓		
SEN. TOM BECK	✓		
SEN. JIM BURNETT	✓		
SEN. B.V. "CHRIS" CHRISTIAENS	✓		
SEN. EVE FRANKLIN	✓		
SEN. LOREN JENKINS	✓		
SEN. GREG JERGESON	✓		
SEN. J. D. LYNCH	✓		
SEN. DALE MAHLUM	✓		
SEN. KEN MILLER	✓		
SEN. ARNIE MOHL	✓		
SEN. LINDA NELSON	✓		
SEN. MIKE TAYLOR	✓		
SEN. DARYL TOEWS	✓		
SEN. MIGNON WATERMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

DATE 3/18/97

SENATE COMMITTEE ON Finance & Claims

BILLS BEING HEARD TODAY: HB 100, HB 208, HB 559

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dave Ohler	Dept Corrections	100	X	
Dave Ohler	Dept Corrections	559	X	
Brennan Nordlund	Dept of Justice	208 559	X	
Charles R. Brooks	DOI Task Force	559	X	
Mary Craigle	DOC	100	X	
Mary Craigle	DOC	559	X	
Mike Ruppert	State DUI Task Force	559	X	
Craig Reap	Mont Highway Patrol	208	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Discussion: SEN. BECK The purpose of this amendment is to leave it to the discretion of the judge to use the ignition interlock device and not limit the license for 5 years. In the event he doesn't use it, the license cannot be reissued for at least 5 years.

Brenda Nordlund, Department of Justice This allows the court to impose an alcohol ignition interlock device on an offender who is a third or subsequent offender within 5 years. If the court opts not to impose that then no driving privileges can be conferred on that offender for 5 years.

CHAIRMAN SWYSGOOD Does this affect SEN. WILSON'S bill on imposing the interlock device after the second offense. Ms. Nordlund No.

SEN. MAHLUM Does this amendment take care of my concern yesterday on an offender that has cleaned himself up? Ms. Nordlund Not necessarily. If alcohol ignition interlock devices are not readily available in a community, the court would be unlikely to impose this restriction. There is no way for that person to obtain driving privileges for the 5 year period.

SEN. CHRISTIAENS As I understand this there would be no provisional license for work. Is that correct? Ms. Nordlund That is correct.

Vote: THE MOTION TO AMEND HB 208 WITH AMENDMENT #HB020805.ASF CARRIED UNANIMOUSLY.

Motion: SEN. TAYLOR MOVES HB 208 BE CONCURRED IN AS AMENDED.

Motion/Vote: SEN. JENKINS MOVES TO TABLE HB 208. THE MOTION CARRIES 12-4 ON ROLL CALL VOTE.

{Tape: 2; Side: B; Approx. Time Count: 11:09; Comments: None.}

EXECUTIVE ACTION ON HB 559

Amendments: Amendment #hb0559.bgn. (EXHIBIT #8)

Motion: SEN. CHRISTIAENS MOVES TO AMEND HB 559 WITH AMENDMENT #HB0559.BGN.

Discussion: SEN. CHRISTIAENS This amendment allows the department to record violations that occur on an Indian reservation. It also takes care of the concerns of REP. HEAVY RUNNER.

SEN. TAYLOR Can you tell me the pros and cons of this amendment? Ms. Nordlund In many respects this is a semantic amendment. It doesn't make a substantive change other than reversing the position of who is the actor and who is passive in this

relationship. It gives the department the ability to record if the tribal court says it should.

SEN. BECK I have a problem with **REP. HEAVY RUNNER** coming in here We pointed out that the current language is "may" and is up to the tribal government's discretion. **SEN. CHRISTIAENS** I don't disagree with you but if it makes it more palatable and encourages tribal governments to cooperate with the release of those records I think we should do it.

Vote: THE MOTION TO AMEND HB 559 WITH AMENDMENT #HB0559.BGN
FAILED 7-9 ON ROLL CALL VOTE.

Motion/Vote: SEN. LYNCH MOVES THAT THE AMENDMENT WE JUST PUT IN
HB 100 COORDINATES WITH HB 559. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. CHRISTIAENS MOVES HB 559 BE CONCURRED IN AS
AMENDED. THE MOTION FAILED 8-8 ON ROLL CALL VOTE.

Amendments to House Bill No. 559
Second Reading Copy

Requested by Sen. Christeans
For Senate Finance and Claims

Prepared by Brenda Nordlund, Department of Justice
March 18, 1997

1. Page 15, line 6

Following: "(4)"

Strike: "A tribal court of a federally recognized Indian
reservation may report"

Insert: "The department may record any"

2. Page 15, line 7.

Following: "vehicles"

Strike: "to the department for recording purposes under this
chapter"

Insert: "received from a tribal court of a federally recognized
Indian reservation"

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/19/97 BILL NO. HB559 NUMBER hb 0559.bgn

MOTION: amend

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		✓
SEN. TOM BECK	✓	
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH	✓	
SEN. DALE MAHLUM		✓
SEN. KEN MILLER		✓
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR		✓
SEN. DARYL TOEWS		
SEN. MIGNON WATERMAN	✓	
	7	9

SEN:1997
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 8/19/97 BILL NO. HB 559 NUMBER _____

MOTION: BCCAA

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN	✓	
SEN. LARRY BAER	✓	
SEN. TOM BECK		✓
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH		✓
SEN. DALE MAHLUM		✓
SEN. KEN MILLER	✓	
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON		✓
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS		
SEN. MIGNON WATERMAN	✓	
	8	8

SEN:1997
wp:rlclvote.man
CS-11

EXECUTIVE ACTION ON HB 136

Motion: SEN. CHRISTIAENS MOVES HB 136 BE CONCURRED IN.

Amendments: Amendment #hb013601.asf. (EXHIBIT #9)

Motion: SEN. WATERMAN MOVES TO AMEND HB 136 WITH AMENDMENT #HB013601.ASF.

Discussion: Ms. Fox This amendment clarifies that only non-profit pre-release centers could come to the Health Facility Authority to ask for bonding.

(EXHIBIT #10) handed out by Mike Ferriter, DOC.

Vote: THE MOTION TO AMEND HB 136 WITH AMENDMENT #HB013601.ASF CARRIED UNANIMOUSLY.

Motion/Vote: SEN. MAHLUM MOVES HB 136 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH SEN. MOHL AND TAYLOR VOTING NO. SEN. MAHLUM will carry HB 136.

{Tape: 3; Side: B; Approx. Time Count: 11:24; Comments: None.}

EXECUTIVE ACTION ON HB 559

Amendments: Amendment #hb0559.bgn. (EXHIBIT #11)

Motion: SEN. CHRISTIAENS MOVES TO AMEND HB 559 WITH AMENDMENT #HB0559.BGN.

Discussion: SEN. CHRISTIAENS explains the amendment. This is a bill that was worked on by the DUI task force and is considered a very important piece of their work. I urge your support of this amendment.

Vote: THE MOTION TO AMEND HB 559 WITH AMENDMENT #HB0559.BGN CARRIED WITH SEN. MOHL VOTING NO.

Motion/Vote: SEN. CHRISTIAENS MOVES HB 559 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED 11-5 ON ROLL CALL VOTE. SEN. CHRISTIAENS will carry HB 559.

SENATE FINANCE AND CLAIMS
EMENDIT NO. 11
DATE 3/21/97
BILL NO. HB 559

Amendments to House Bill No. 559
Second Reading Copy

For Senate Finance and Claims

Prepared by Brenda Nordlund, Department of Justice
March 21, 1997

1. Title, line 12
Following: "COURTS"
Strike: "OR FEDERAL ENCLAVES"
2. Title, line 13
Following: "CONVICTIONS"
Strike: "AND MAINTAINING INDIVIDUAL DRIVING RECORDS"
3. Page 15, lines 6-9
Strike: subsection (4) in its entirety
4. Page 17, lines 9 and 10
Following: "another state"
Strike: "a federal enclave,"



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 21, 1997

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill 559 (third reading copy -- blue), respectfully report that House Bill 559 be amended as follows and as so amended be concurred in.

Signed: 
Senator Chuck Swysgood, Chair

That such amendments read:

1. Title, line 12.
Strike: "OR FEDERAL ENCLAVES"
2. Title, line 13.
Strike: "AND MAINTAINING INDIVIDUAL DRIVING RECORDS"
3. Page 15, lines 6 through 9.
Strike: subsection (4) in its entirety
4. Page 17, lines 8 and 9.
Strike: "a federal enclave,"
5. Page 17, line 10.
Strike: "a federal enclave,"
6. Page 18, lines 21 and 22.
Strike: "The person is not eligible for parole."

-END-

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

621458SC.STS

MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/97 BILL NO. H0559 NUMBER hb 054403.asf
MOTION: amend

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN		✓
SEN. TOM KEATING, VICE CHAIRMAN		✓
SEN. LARRY BAER		✓
SEN. TOM BECK		
SEN. JIM BURNETT		✓
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH		
SEN. DALE MAHLUM		✓
SEN. KEN MILLER	✓	
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR		✓
SEN. DARYL TOEWS		✓
SEN. MIGNON WATERMAN	✓	
	6	9

SEN:1997
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MONTANA SENATE
1997 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/97 BILL NO. HB569 NUMBER _____

MOTION: BCCAA

NAME	AYE	NO
SEN. CHUCK SWYSGOOD, CHAIRMAN	✓	
SEN. TOM KEATING, VICE CHAIRMAN	✓	
SEN. LARRY BAER		✓
SEN. TOM BECK		✓
SEN. JIM BURNETT	✓	
SEN. B.F "CHRIS" CHRISTIAENS	✓	
SEN. EVE FRANKLIN	✓	
SEN. LOREN JENKINS		✓
SEN. GREG JERGESON	✓	
SEN. J. D. LYNCH		✓
SEN. DALE MAHLUM	✓	✓
SEN. KEN MILLER	✓	
SEN. ARNIE MOHL		✓
SEN. LINDA NELSON	✓	
SEN. MIKE TAYLOR	✓	
SEN. DARYL TOEWS	✓	
SEN. MIGNON WATERMAN	✓	
	11	5

SEN:1997
wp:rlclvote.man
CS-11